- **THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU**
- **+W.P.No. 12960 of 2003**

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%. 01.04.2005.

1 Maillapalli Chinakoteswara Rao, S/o. Raghavaiah,
R/o. Surapuvarigudem Village, Buttaigudem Mandal, W.G. District.
2 Jujjavarapu Venkata Satyanarayan S/o. Venkata Rao
R/o. Surapuvarigudem Village, Buttaigudem Mandal, W.G. District.
3 Kusuluri Surya Rao S/o. Somaraju,
R/o. Surapuvarigudem Village, Buttaigudem Mandal, W.G. District.
4 Parimi Pentaiah S/o. Rattaiah
R/o. Surapuvarigudem Village, Buttaigudem Mandal, W.G. District.
5 Parimi Rattaiah S/o. Subbanna,
R/o. Surapuvarigudem Village, Buttaigudem Mandal, W.G. District.

.....Petitioners

Vs.

$ 1 The Mandal Revenue Officer, Buttaigudem Mandal, W.G. District.
2 The Mandal Revenue Inspector, Buttaigudem Mandal, W.G. District.
3 Dadi Narayana Swamy, S/o. Govindu, R/o. Narayanapuram, Jeelugumilli

Mandal,W.G. District.

.....Respondents

Counsel for the Petitioner : Mr. P.R.K.Amerandra Kumar

Counsel for the Respondent Nos.1 and 2: GP for Social Welfare

Counsel for the respondent No.3: Mr. V.Venugopala Rao

<Gist :

>Head Note:

? Cases referred:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 12960 of 2003

Between:

1 Maillapalli Chinakoteswara Rao, S/o. Raghavaiah,
R/o. Surapuvarigudem Village, Buttaigudem Mandal, W.G. District.
2 Jujjavarapu Venkata Satyanarayan S/o. Venkata Rao
R/o. Surapuvarigudem Village, Buttaigudem Mandal, W.G. District.
3 Kusuluri Surya Rao S/o. Somaraju,
R/o. Surapuvarigudem Village, Buttaigudem Mandal, W.G. District.
4 Parimi Pentaiah S/o. Rattaiah
R/o. Surapuvarigudem Village, Buttaigudem Mandal, W.G. District.
5 Parimi Rattaiah S/o. Subbanna,
R/o. Surapuvarigudem Village, Buttaigudem Mandal, W.G. District.

..... PETITIONERS

AND

1 The Mandal Revenue Officer, Buttaigudem Mandal, W.G. District.
2 The Mandal Revenue Inspector, Buttaigudem Mandal, W.G. District.
3 Dadi Narayana Swamy, S/o. Govindu, R/o. Narayanapuram, Jeelugumilli

Mandal,W.G. District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue order or direction more particularly one in the nature of Writ of Mandamus, declare the proceedings in R.O.C.201/2003 (Dy. M.R.O.) dt. 23.06.2003 of the 1st respondent as illegal, arbitrary and violative of Article 300-A of the constitution of India and violative of principles of natural justice and consequentially direct the respondents not to evict the petitioners form the schedule land situated in R.S.No. 266/3, Ac.6.45, R.S.No. 266/4 Ac.1.00 cts R.S.No. 269/3 Ac.3.00 cts, R.S.No. 270/4 Ac.346 cts, R.S.No.No. 292/1 Ac.2.40 cts of Surapuvarigudem h/o Buttaigudem village and Mandal, W.G.District.

Counsel for the Petitioner: MR.P.R.K.AMERANDRA KUMAR

Counsel for the Respondent Nos.1 and 2: GP FOR SOCIAL WELFARE

Counsel for the Respondent No.3: Mr.V.Venugopala Rao

The Court made the following :

ORDER:

Dadi Narayana Swamy, (3rd respondent) filed a petition in SR NO.96 of 1979 before the Special Deputy Collector, Tribal Welfare, seeking restoration of the lands to him. By the order dated 23-5-1980 the Special Deputy Collector, Tribal Welfare, allowed the said petition. That order was kept in abeyance by virtue of G.O.Ms.No.129, Social Welfare Department, dated 13-8-1979. After the said GO was quashed in W.P.No.1755 of 1980, by the order dated 5-12-1984, the Special Deputy Collector (Tribal Welfare), by his order dated 28-4-1986 directed the respondents in SR No.96 of 1979 i.e., Achanta Ayanna, Doddi Veeranna, Parimi Rattayya, Parimi Surya Rao, Avula Mavulayya, Ch.Ramayyamma to restore possession of Ac.35-00 cents in patta No.27, to the 3rd respondent. Aggrieved by the said order, D.Veeranna, Parimin Rathaiah and Parimi Surya Rao preferred S.R.A.No.31 of 1986 to the Agent to the Government, who by his order dated 20-8-1987 allowed the same in respect of the lands in possession of Doddi Veeranna and Parimi Rathaiah i.e., Ac.4-00 cents in Juvvikoyya Chenu and Ac.4.00 cents in Marrikoyya Chenu and dismissed the appeal of Parimi Surya Rao in respect of Ac.7-00 cents in Marrikoyya Chenu. Aggrieved by the said order of the Agent to the government, 3rd respondent filed W.P.No.4392 of 1987 in this Court, adding Achanta Ayyanna, Doddi Veeranna, Parimi Surya Rao, Parimi Rattaiah, Chavatapalli Ramayamma also as respondents. That petition was allowed in part on 15-6-

1994, with a direction to respondents 1 and 2 therein to evict respondents 3,5 and 7 therein i.e., Achanta Ayyanna, Parimi Surya Rao and Chavatapalli Ramayamma from the land in Patta No.27 situated at Surapuvarigudem village, H/o Buttaigudem, which order became final. Thereafter, 1st respondent issued a memo dated 23-6-2003 to the Revenue Inspector directing him to take possession of Ac.17-31 cents i.e., Ac.6-45 cents in R.S.No.266/3, Ac.1-00 in R.S.No.266/4, Ac.3-00 in R.S.No.269/3, Ac.3-46 cents in R.S.No.270/4, Ac.2-40 cents in R.S.No.292/1 of Buttaigudem village from Mamillapalli Peda Koteswara Rao, Doddi Venkanna, Kusuluri Surya Rao, Parimi Rathaiah and Parimi Seetaratnam of Surapuvarigudem village and restore them to the third respondent. That memo dated 23-6-2003 of the first respondent is questioned in this petition.

2. The contention of the learned counsel for the petitioners is that since none of the petitioners was given an opportunity of being heard before the order in the memo impugned was passed, and when the appeal filed by the 5th petitioner (Parimi Rathaiah) was allowed by the Agent to the Government and the writ petition filed by the 3rd respondent questioning the said order was dismissed and when none of the petitioners 1 to 4 are parties to S.R.No.96/79, filed by the 3rd respondent, the direction to eject the petitioners, in violation of principles of natural justice and without properly looking into the facts of the case, is liable to be set aside.

3. The contention of the learned counsel for the 3rd respondent is that since the order of the Special Deputy Collector (Tribal Welfare) directing restoration of possession of Ac.35-00 cents to the 3rd respondent became final in respect of the persons, who did not prefer an appeal, and since the appeal filed by Doddi Veeranna and Parimi Rathaiah was allowed only in respect of Ac.8-00 cents, and that order was confirmed by this Court, 3rd respondent who is entitled to recover possession of Ac.27-00 cents is not put in possession of the entire extent of Ac.27-00 cents but was put in possession of only Ac.26-00 cents and since the presumption Regulation No.3 (1) (b) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959, (the Regulation) is in favour of the 3rd respondent, who is a Tribal, and since petitioners are not Tribals, petitioners are not entitled to any relief. It is his contention that after the Special

Deputy Collector and Agent passed orders, referring to patta number of the lands, a survey was conducted and lands were given numbers and sketchs and correlation statements are prepared by the Government and since those sketches and statements clearly show that the lands in possession of the petitioners are covered by the patta number mentioned in the orders passed by the Special Deputy Collector, Tribal Welfare and the Agent to the Government, first respondent directing the 2nd respondent to restore possession of the lands in favour of the 3rd respondent cannot be said to be irregular or illegal. It is his contention that parties against whom order of eviction is passed would, in order to frustrate the order or cause delay, induct third parties in possession and make a claim through them that they have a right to be heard. It is his contention that since land is already delivered possession to the 3rd respondent this petition became infructuous.

4. In spite of my direction to the 1st respondent to produce the relevant record, 1st respondent did not produce the relevant record. Since this petition can be disposed of even without the aid of the record, I do not wish to take any action against the 1st respondent for his failure to comply with the direction issued by me.

5. I see no force in the contention of the learned counsel for 3rd respondent that this petition became infructuous since 3rd respondent is delivered possession of the lands in pursuance of the impugned memo. If the memo impugned is liable to be set aside, 3rd respondent cannot continue in possession and has to restore possession to petitioners because any benefit taken under an unsustainable order cannot be retained.

6. As seen from the material documents produced by the petitioners, which are not disputed by the learned counsel for the 3rd respondent, the order of the Special Deputy Collector in S.R.No.96 of 1979 is in respect of Ac.35-00 cents of Government dry land in Patta No.27. The order dated 20-8-1987 in SRA No.31 of 1986 of Agent to the Government shows that appeal in respect of Ac.4-00 cents of Juvvikoyya Chenu and Ac.4-00 cents of Marrikoyya Chenu is allowed and the appeal in respect of Ac.7-00 cents of Marrikoyya Chenu is dismissed. Therefore, as rightly contended by the learned counsel for the 3rd

respondent, 3rd respondent is entitled to restoration of possession of Ac.27-00 cents in patta No.27 of Surapuvarigudem H/o Buttayagudem.

7. As per Rule 7 (4) of the AP Scheduled Areas Land Transfer Rules 1969 (for short 'the Rules'), the order for restoration of possession passed by the Agent or the Agency Divisional Officer or other Officer has to be executed like a decree for ejectment passed by a civil Court. In view thereof the order passed in favour of the 3rd respondent has to be executed like a decree for ejectment against the respondents in the orders passed by the Special Deputy Collector and the Agent to Government, confirmed in WP No.1755 of 1980. It is well known that before executing a decree for eviction passed two years before the filing of the EP, the judgment debtor is entitled to notice under Rule 22 of Order 21 CPC. It is not even the case of 3rd respondent that he filed a petition seeking execution of the order in his favour. When the appeal filed by the 5th petitioner is allowed by the Agent, how he can be evicted is not mentioned by any of the respondents. There is nothing on record to show that 3rd respondent filed correlation sketches before the Special Deputy Tahsildar delimiting the land sought delivery of possession by him in patta No.27. Respondents did not produce any record to show that the lands mentioned in the impugned memo are in fact located in patta No.27. The documents produced by the learned counsel for 3rd respondent show that lands in S.No.266/3, 266/4, 270/4, 292/1 were in Old No.212/3 corresponding to patta No.62 in 1378 Fasli and patta No.27 of Surapuvarigudem. Since appeal of Doddi Veeranna and Parimi Rattaiah in respect of Ac.4-00 cents of Juvvikoyya Chenu and Ac.4-00 cents of Marrikoyya Chenu was allowed, there should be some material before the executing Court to find out where that Ac.4-00 cents of Juvvikoyya Chenu and Ac.4-00 cents of Marrikoyya Chenu are located and where the other Ac.7-00 cents of land in Marrikoyya Chenu, in possession of Parimi Surya Rao, whose appeal was dismissed, are located. So it is prima facie evident that even without any material before it, and even without any petition for execution by the 3rd respondent and even without notice to petitioners, first respondent directed the 2nd respondent by his impugned memo, to eject the petitioners and put the 3rd respondent in possession of the lands mentioned in the memo though those S.Nos are not found in the order of Special Deputy Tahsildar and

Agent to Government in S.R.No.96 of 1979 and S.R.A.No.31 of 1986.

8. Hence the writ petition is allowed and the memo impugned is set aside, the matter is remanded to the Special Deputy Collector with a direction to follow the procedure prescribed by Rule 7 (4) of the Rules, while ordering delivery of possession of the land to 3rd respondent in pursuance of the order in S.R.No.96 of 1979 and SRA No.31 of 1986.

9. Since it is stated that the 3rd respondent was put in possession of the lands after dispossessing the petitioners, respondents 1 and 2 shall restore possession of the petitioners within one month from today after the crop therein is removed by the 3rd respondent. Parties to bear their own costs.

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01-04-2005

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday the First day of April, Two thousand and five.

To

One fair copy to the Hon'ble Mr Justice C.Y.Somayajulu (For his lordships kind perusal)

1 The Mandal Revenue Officer, Buttaigudem Mandal, W.G. District.
2 The Mandal Revenue Inspector, Buttaigudem Mandal, W.G. District.
3 Two CCs to GP for Revenue, High Court buildings, Hyderabad.

4 Two CD copies.

5 The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.

6. The Secretary, AP Advocates' Association Library, High Court buildings, Hyderabad.

7. 8 LR copies.